Spirit Airlines Inc. v. 24/7 Real Media Inc. et al Doc. 56 Att. 44

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 07-60399-CIV-ALTONAGA/Turnoff

SPIRIT AIRLINES, INC.,

Plaintiff,

vs.

24/7 REAL MEDIA, INC., et al.,

Defendants.

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ORDER

THIS CAUSE came before the Court upon a *sua sponte* review of the record. On March 22, 2007, Plaintiff, Spirit Airlines, Inc. ("Spirit"), filed its Complaint for Interpleader [D.E. 1]. In the Complaint, Spirit alleges that the Court has subject matter jurisdiction over the case under both the Federal Interpleader Act ("FIA"), 28 U.S.C. § 1335, and Federal Rule of Civil Procedure 22 in concert with the diversity statute, 28 U.S.C. § 1332. Because federal courts are bound to ensure that their exercise of jurisdiction is proper, the Court here undertakes an analysis of subject matter jurisdiction. *See University of S. Alabama v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999).

There are two different types of interpleader actions: rule-based (under Rule 22) and statutory (under the FIA). In rule-based interpleader actions, federal courts may exercise subject matter jurisdiction only where one of the Article III grants of jurisdiction is implicated.[1] In statutory interpleader actions, federal courts may exercise subject matter jurisdiction so long as the requirements of the FIA are met.

In this case, Spirit alleges that its suit is premised upon both the FIA and Rule 22. It alleges

[1] Because Rule 22 is simply a procedural rule, it does not itself confer subject matter jurisdiction.

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that, should the Court treat this action as a Rule 22 interpleader action, the Court may exercise subject matter jurisdiction pursuant to 28 U.S.C. § 1332, the diversity statute. District courts may exercise diversity jurisdiction where the amount in controversy exceeds $75,000 and the suit is between citizens of one state and citizens or subjects of another state. 28 U.S.C. § 1332(a). Diversity jurisdiction requires complete diversity, meaning that every plaintiff must be diverse from every defendant. *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 (11th Cir. 1998). A corporation is "deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." 28 U.S.C. § 1332(c)(1).

In its Complaint, Spirit asserts that it is incorporated in Delaware and that its principal place of business is in Florida. (*See Compl.* [D.E. 1] at ¶ 1). A review of the Complaint indicates that a number of Defendants are also incorporated in Delaware. (*See id.* at ¶¶ 2, 4, 7, 9, 11, 14, 18, 20-21). Diversity is not complete in this case and the Court may not exercise diversity subject matter jurisdiction. Thus, this action may not proceed as a rule-based interpleader action.

Because there is no diversity jurisdiction, this case may only proceed as a statutory interpleader action under the FIA. It appears that the statutory requirements for jurisdiction are met. *See* 28 U.S.C. § 1335(a) (requiring that the amount in controversy exceed $500 and that two or more adverse claimants be of diverse citizenship). In a statutory interpleader action, however, deposit of the amount in controversy with the Court is a requirement for the exercise of jurisdiction. *See* 28 U.S.C. § 1335(a)(2). The amount required to be deposited is the highest amount in controversy in the case. *See* 4 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE - CIVIL § 22.04[6][b].

A review of the pleadings that have been filed indicates that Defendant, Carrollton Bank, asserts that it is entitled to $660,697.73 from Spirit. (*See Carrollton Bank Ans.* [D.E. 15] at ¶ II.2). While Spirit asserts in its Complaint that that amount is subject to proration or other deduction, such a determination cannot be made at this stage of the proceedings.

In addition, in a statutory interpleader action, the choice of venue must be made in accordance with the FIA. Courts have held that plaintiffs in statutory interpleader actions may not rely, as an alternative, upon the general venue statute, 28 U.S.C. § 1391, in choosing venue for their actions. *See, e.g., Metropolitan Life Ins. Co. v. Chase*, 294 F.2d 500, 502 (3d Cir. 1961); *Leader Nat'l Ins. Co. v. Shaw*, 901 F. Supp. 316, 320-21 (W.D. Okla. 1995). The venue statute for statutory interpleader actions, 28 U.S.C. § 1397, provides that venue is proper in judicial districts where one or more of the claimants reside. It appears, therefore, that venue may not be proper in this Court.

Based on the foregoing, it is

ORDERED AND ADJUDGED as follows:

1. Spirit shall submit a written filing addressing: (1) whether Spirit is, in fact, obligated to make a deposit in the amount of $660,697.73 with the Court Registry and whether Spirit is prepared to make such a deposit; and (2) whether venue is proper in this Court. Such filing shall be made **on or before May 17, 2007**.

2. Given the undersigned's concerns about jurisdiction and venue, the Court's May 1, 2007 Order on Default Procedure **[D.E. 39]** is **Set Aside** pending a determination of whether this case should proceed in this Court.

DONE AND ORDERED in Chambers at Miami, Florida this 3rd day of May, 2007.

Cecilia M. Altonaga
CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

Copies provided to:
(1) Magistrate Judge William C. Turnoff
(2) Counsel of record